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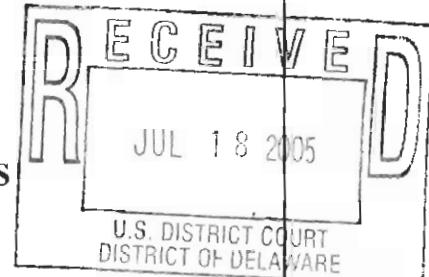
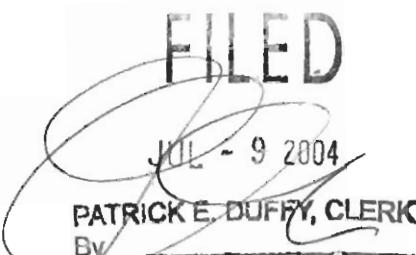
**RECEIVED**CLERK, U.S. DISTRICT COURT  
DISTRICT OF MONTANA  
BILLINGS, MONTANA

Attorneys for Defendants.

IN THE UNITED STATES DISTRICT COURT  
 DISTRICT OF MONTANA  
 BUTTE DIVISION

MAGTEN ASSET MANAGEMENT ) Case No.: CV-04-26-BU-RFC  
 CORPORATION, )  
 Plaintiff, )  
 vs. )  
 MIKE J. HANSON and ERNIE J. KINDT, ) MOTION TO DISMISS  
 Defendant )

Defendants Michael Hanson and Ernie Kindt<sup>1</sup> through their attorneys of record,  
 Browning, Kaleczyc, Berry & Hoven, P.C., hereby move this Court pursuant to Fed. R. Civ. P.  
 12 to dismiss this case for failure to state a claim against Defendants for which relief may be  
 granted since: (1) as a matter of law, only NorthWestern Corporation and not the named  
 Defendants had the legal authority to order the transfer of certain assets and liabilities from its  
 wholly owned subsidiary to the corporate parent; (2), as a matter of law, the named Defendants  
 owed no fiduciary duty to Magten or any other holder of QUIPS which were general creditors of



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<sup>1</sup> Both Jack Haffey and Ellen Senechal retired prior to the transfer of assets and liabilities complained of by Magten. Magten has stipulated to a dismissal of Mr. Haffey and Ms. Senechal, which Stipulation and Proposed Order are currently pending before this Court.

1 the limited liability company; and (3) in any event, the terms of the relevant documents on which  
2 Magten bases its claim permitted the transfer of the assets and liabilities at issue here from the  
3 limited liability company to NorthWestern.

4 For these reasons and the reasons more fully set forth in the accompanying Memorandum  
5 in Support of the Motion to Dismiss, Defendants respectfully request that the Complaint against  
6 them be dismissed with prejudice.

7 Dated this 9th day of July, 2004.

8 BROWNING, KALECZYC, BERRY & HOVEN, P.C.

9  
10 By Kimberly Beatty  
11 Stanley T. Kaleczyc  
Kimberly A. Beatty

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 1<sup>st</sup> day of July, 2004, a true and correct  
3 copy of the foregoing was mailed by first-class mail, postage prepaid, addressed to:

4 James Goetz  
5 J. Devlan Geddes  
6 Goetz, Gallik & Baldwin, P.C.  
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